

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on April 7, 1999 at 3:30 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Ken Miller (R)

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 158, 4/5/1999
Executive Action: HB 158

HEARING ON HB 158

Sponsor: REPRESENTATIVE KARL OHS, HD 33, HARRISON

Proponents:

**Denise Mills, Remediation Division Manager, Department of
Environmental Quality**

Ronna Alexander, Montana Petroleum Marketers Association

Opponents:

Linda Stoll, Montana Local Health Officers Group

Opening Statement by Sponsor:

REPRESENTATIVE KARL OHS, HD 33, HARRISON, presented **HB 158** which amends the Underground Storage Tanks Program and privatizes the inspection program. There is a feeling that the inspection of the underground storage tanks is not what it should be. The Department will set the criteria for private entrepreneurs to become underground storage tank inspectors. It would probably be the same people who do the installation inspection in many cases, but not necessarily. If the owner has been negligent, he does not qualify for the petroleum fund to help clean up the problem. The inspection is something that needs to be reviewed and decide what is the proper way to ensure it is done.

Proponents' Testimony:

**Denise Mills, Remediation Division Manager, Department of
Environmental Quality**, spoke in support of the bill as per **EXHIBIT (nas75a01)**.

Ronna Alexander, Montana Petroleum Marketers Association, stated the Association is supporting **HB 158** in its major conceptual form. She passed out amendments for the committee to review as per **EXHIBIT (nas75a02)**. The discussions regarding privatizing inspections were not without some concern in the industry. They feel there needs to be scheduled inspections and by having the control over who does it, when they do it, and the link to the eligibility of the petroleum fund, they feel this is probably the right way to go. Currently, inspections are done randomly with some inspected frequently and some quite far apart. This will set a uniform standard for the industry. She then discussed the amendments they proposed.

Opponents' Testimony:

Linda Stoll, Montana Local Health Officers Group, spoke in opposition to the bill and presented testimony on behalf of Peter

Nielsen, Environmental Health Supervisor for the Missoula City-County Health Department as per **EXHIBIT (nas75a03)**.

Questions from Committee Members and Responses:

SENATOR GROSFIELD questioned if the reason for eliminating Section 12(2) was also to get rid of the limitation on the amount of time local agents can do these inspections? **Ms. Alexander** stated the amendment does do away with the time frame. Industry is saying "privatize us", charge us and let Local Governments have the options to compete with private enterprise like anyone else. **SEN. GROSFIELD** questioned if local agent referred to a Local Government agent? **Ms. Alexander** stated yes.

SEN. GROSFIELD questioned why were they wanting to get rid of Local Government inspectors? **Ms. Mills** stated they envision Local Governments to have a role in this program but it was not their vision they would be inspectors that are still being paid by the Department, they would be paid by the owner if they become licensed like the private inspectors. Through their delegation agreement they have currently been delegating, through contracts and some funding to certain Local Governments, inspection authority. Local Government also does compliance assistance outreach and inspections on removals and installation of underground storage tanks. It is an activity they envision to continue. They have tried to explain to some Local Government representatives that there would still be a role for them. They believe the role to be compliance assistance, education and outreach, oversee or inspect installation and removals of tanks that are being done on a tank permit, and then to help the Department in the oversight of third party inspectors. The Department increased their appropriation for grants to Local Governments in the anticipation they would have a role in the third party inspector oversight activity with the Department. **SEN. GROSIFIELD** stated on page 10, line 25, it says the owner reimburses the local agent for the cost of the inspection but there are no guidelines in that language. **Ms. Mills** stated in the process of conceptualizing the process they felt it would be better for competition to set the rates based on demand rather than have guidelines in statute. **SEN. GROSFIELD** stated the language does not say the price of the inspection needs to be tied necessarily to cost. He questioned if it was the Department's intent not to allow a local agent to conduct inspections after 12/31/2001 as stated on page 10, line 26? **Ms. Mills** stated the intention of the language is that the Local Governments could be licensed and could compete with the private sector but they would not be subsidized from the Department for that activity. This is not intended to bar them after that date from taking up the inspector role for these facilities.

SENATOR COCCHIARELLA questioned what was detailed in an inspection? **Ms. Mills** stated on an operation inspection an inspector would look to see that the record keeping has been done properly like inventory control. They check for proper function of various tank gauges and electrical supplies. There is no internal inspection. **SEN. COCCHIARELLA** questioned the purpose of the two definitions of Inspector on page 2, line 13 and line 29? **Ms. Mills** stated the intent of the definition of a Licensed Inspector on line 29 is someone the Department has examined and certified they are qualified to become an inspector and be issued a license. The definition on line 13 more broadly refers to the Department inspector or Local Government inspectors that might be doing inspections of installations and removal of tanks. There may be some overlap. **SEN. COCCHIARELLA** questioned what in the law says somebody can be an inspector after passing this bill? **Ms. Mills** stated the Department has inspectors on staff and they do delegate to Local Governments right now. In drafting the legislation they did not see the need to change some of the existing language in the law. Page 3, Section 4 of the bill discusses rule making authority where they refer to inspectors rather than licensed inspectors. In the rule making authority they are looking to define the program and use as a mechanism to define what the qualifications need to be, i.e. what the requirements are for an inspection, what kind of reporting is required, etc.

SENATOR COCCHIARELLA stated her concern with the legislation is that privatization for the sake of privatization does not always work. Is the purpose of the bill to get more inspections done or is the purpose to provide private sector inspection jobs? **Ms. Mills** stated this bill does propose to establish the inspection program for private inspectors but it is not a privatization bill. It is an effort to give their program some good integrity in the long run. They have passed the federal deadline and they are looking for a mechanism to have a good source of resources to get that work done.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 42; Comments : None.}

SENATOR COCCHIARELLA stated if the bill says inspections every three years and they are already having them done every two years in Missoula, why would she vote for this bill? If she votes for the bill and the cost of inspections skyrocket, what will she say if she votes for this bill? **Ms. Alexander** stated that is why there has been so much discussion over the entire issue of inspections. The problem is setting a minimum standard for everyone. If the bill is not passed then they are back to no

uniform standard and perhaps people not being in compliance when they think they are, without access to the fund.

SENATOR ROUSH questioned the cost of the inspection and the language on page 10, lines 25 and 26. What does the Department charge for an underground tank inspection now? **Ms. Mills** stated currently they do not charge the facility owner for an inspection except for certain circumstances where they have a permit condition where they need to be on site for an installation and charge \$35 per hour for them to be there. When a Local Government does an inspection they are compensated \$25 per hour for that inspection. There is no cost of inspection to the owners. This bill, if passed, would require the owners to pay that cost. They believe the owners will benefit from this to protect their businesses, etc. **SEN. ROUSH** questioned how long it took to do an inspection? **Ms. Mills** stated it can range from two to six hours in a day. Most would fall in a range of two hours to a half day. **SEN. ROUSH** asked if they considered soil sampling to be a way to inspect tanks under this proposal? **Ms. Mills** stated they would only use soil sampling if they were going to close a tank. They might decide to close the tank and test the soil around it to see if it was contaminated. There are a variety of ways to check leak detection. One method would be groundwater monitoring wells and they would look at that type of data for facilities set up with that.

SENATOR MAHLUM questioned can an inspector and an installer be the same person and hold two different licenses? **Ms. Mills** stated yes that person could. There is a condition in the legislation that would not allow an installer to inspect his own work at least one year from the time it was installed.

SENATOR MAHLUM questioned if amendment #2 could not be changed to \$75 to average it out better? **Ms. Alexander** stated that would probably balance out the math.

SENATOR GROSFIELD questioned the language in Section 12, Subsection 2? **REP. OHS** stated the whole section was written to try to help Missoula. A great deal of time was spent trying to work out this language to allow the Local Governments some time to continue to do their own inspection and slowly transition over to private inspections so the same kind of inspection is going on all over the state. He was under the impression they were in agreement and now today he finds out they are not. His inclination is to take the whole thing out because no matter what is done to try to get along with Local Governments, they say is not good enough. Most of the language is just an attempt to try to transition from the Local Government, giving them two years to

do their own inspection, and then transition to private inspectors.

SEN. GROSFIELD said he thought that was the intent but he does not think that is what the language says. A local agent can do inspections until December 31, 2001, but then on lines 21 and 22 it says they have to be licensed pursuant to Section 9 before they can do inspections from day one, meaning prior to December 31, 2001. That is what it says but he does not think that is the intent. **Mr. Mitchell** stated the way it is written, any inspection done under this new Section 12, has to be conducted by a person licensed to be an inspector and that is described in Section 9 which includes the local agents. **SEN. GROSFIELD** did not think that was what the amendment was supposed to do. He thought it was indicated that you give the local agents, under a delegation of authority agreement with the Department, two years to keep going and after December 31, 2001, they would have to become licensed if they wanted to continue doing inspections.

Mr. Simonich, Director, DEQ, stated there are Local Government agents currently working under the authority of the Department where they have been delegated and are currently licensed by the Department. The language was drafted such that those counties currently doing that work, under delegation agreements, have licensed inspectors. They were intending that during the interim period when the county or local fire district was doing inspections, their inspector had to be a licensed inspector as well. **SEN. GROSFIELD** stated he did not see a reason to have the amendment at all. **Mr. Simonich** stated the purpose of the amendment is they believe local county governments, whether fire districts or county sanitarians, could opt to do this. Subsection 2 says for those counties where they currently have that program and they want to do it, they are the only ones that can do that inspection for the first two year period. This program becomes effective next January. There is a period through this year where they would put the program together and begin licensing inspectors. The requirement for those inspections start next January and then proceeds to every three years after that. In the first two years, subsection 2 says the owner has to use Local Government if Local Government will do it. If they are not already in the program or the local inspector is not available, then they can go to the private sector. **SEN. GROSFIELD** stated on line 26 should it not say "a local agent may not conduct inspections required by this 'subsection' after December 31, 2001". **Mr. Simonich** stated yes. **SEN. GROSFIELD** questioned the cost and if there were any guidelines or rules for how much can be charged? **Mr. Simonich** stated there are no guidelines. Currently the inspections are done either by the Department or local agents and those are paid for through the

registration fees. They feel fees will be dictated by the marketplace.

SENATOR GROSFIELD questioned why the fees were being doubled?

Mr. Simonich stated to refer to the chart attached to **Ms. Mills** testimony. Those fees were set many years ago when there were nearly 20,000 tanks in the ground. It generated a lot of fees and they have been working off a fairly large fund balance over the years, however, the fund balance has been going down. There are now about 4000 tanks in the ground and the program is being funded with a much smaller population. The regulatory requirements have not gone away. The money does not just fund Local Government inspections, it funds a good portion of the underground tank program within the Department. Those fees pay the Department and also allow them to reimburse the counties for work. They are looking at trying to step up the inspection program with private inspectors but now they have to be able to license them and provide some oversight. They feel by the end of the next biennium, the fund will be nearly dry if there is not an increase in fees.

SENATOR TAYLOR questioned how three year inspections were arrived at? **Mr. Simonich** stated we are talking about the tank system and the operation and maintenance of the facility so it includes not just the tank itself. They are looking at narrowing it down enough so they feel confident they are tightening up on the operation and minimizing the opportunities for leaks to the groundwater. Through this they will provide better assurance to the owners that they know the facilities are in compliance and if they do have a leak, they will be eligible to the fund.

SENATOR CRISMORE questioned if this committee amends this bill at this late date and it goes back to the House, is that what you want? **REP. OHS** stated whatever the committee sees fit. He believes there is time and it could be handled in a timely fashion.

Closing by Sponsor:

REPRESENTATIVE KARL OHS, HD 33, HARRISON, stated we have underground storage tanks out there that, currently in most parts of the state, we are not getting the job done that should be done. Even industry would recognize that. We need to do a better job. According to testimony, there are two to three that do an adequate job. Is it fair those one or two stop the rest of the state from doing what needs to be done? The reason for the amendment in Section 12 (2) was to try to satisfy an unhappy Local Government. He understands now there is no way to get them satisfied and feels it should be taken out because we will not

have their support anyway. This is a program that needs to be done. He encouraged the committee's support.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 25; Comments : None.}

EXECUTIVE ACTION ON HB 158

Motion: SEN. TAYLOR moved that HB 158 BE CONCURRED IN.

Motion: SEN. TAYLOR moved that the ALEXANDER AMENDMENT BE ADOPTED.

Discussion:

SENATOR GROSFIELD stated the amendment gets rid of Subsection 2 altogether and then does the fee changes. The subsection can be changed today and deal with the fees or just get rid of it. He did not have strong feelings one way or another. He does have some language to suggest if the committee wishes to change it.

SENATOR TAYLOR stated it might be easiest to just strike it out rather than try to amend it.

SENATOR KEATING stated it is going to take some time to get Local Government and private people licensed. If this amendment is not in the bill, it gives Local Government time to make that transition. Locals can still do inspections or they can use private people. It is only two years so why not take the amendment out and go for the transition period. By that time they will have experience, people will know what is there and if it is creating a hardship someplace, that can be corrected. If it is working, they can build on it from there. He suggests taking the amendment out and letting the bill go through as it was. He feels the fees should be cut a little bit.

SENATOR GROSFIELD suggested segregating the amendment and deal with them one at a time.

SENATOR COCCHIARELLA stated she was going to vote against the amendment and if this part of the bill goes, she has to vote against the bill. She asked to hear the language **SEN. GROSFIELD** suggested for fixing subsection 2.

SENATOR CRISMORE asked if subsection 2 is taken out, don't we still have time? **Mr. Mitchell** stated if the first Alexander amendment is accepted, on page 10, subsection 2 would disappear. That means there is no guarantee of work to do these inspections for Local Government units that are currently contracted by the

agency or licensed to do these inspections. Subsection 2 simply allows them an exclusive right for two years, to do these inspections in their jurisdiction, until December 31, 2001. That would disappear with this amendment.

SENATOR GROSFIELD stated on line 25 at the end of the sentence he would add, "...inspection at a fee which must be commensurate with reasonable costs of conducting that inspection". A local agent may not conduct inspections required by this section after December 31, 2001, "unless licensed pursuant to Subsection 9".

Substitute Motion: **SEN. COCCHIARELLA** made a substitute motion to **ADOPT LANGUAGE PROPOSED BY SENATOR GROSFIELD TO AMEND SUBSECTION 2 OF THE NEW SECTION 12.**

Discussion:

SENATOR TAYLOR questioned what is better or worse about **SEN. GROSFIELD'S** proposed language than just striking it altogether? **Mr. Mitchell** stated **SEN. GROSFIELD'S** amendment would allow Local Governments the exclusivity but restrict what they could charge to reasonable costs. It also does not cut them off December 31, 2001. They will have to be licensed in order to conduct any inspection no matter what the date. **Mr. Simonich** stated he feels the amendment goes farther than what **SEN. GROSFIELD** intends by changing the language to say, required by subsection 2 and adding unless licensed pursuant to subsection 9. If you are licensed according to subsection 9 then this subsection still applies after 2001. The subsection specifically says local counties must do it. The effect of the amendment is it will always be the county doing the inspection, no option for the private sector. **SEN. GROSFIELD** said he was correct, that was not what he meant.

Substitute Motion: **SEN. COCCHIARELLA** made a substitute motion to **AMEND THE PREVIOUS AMENDMENT TO DELETE THE WORDS "UNLESS LICENSED PURSUANT TO SECTION 9".**

SENATOR COCCHIARELLA stated she was still very concerned that there is a two year time frame for Local Governments and for private people to come up to speed to do this work.

SENATOR TAYLOR stated he resists the second motion because he does not feel there is a boogy man in here. He feels if the motion is stricken, it will accomplish what needs to be done.

SENATOR MAHLUM stated he feels the perception is there will not be anyone capable of inspecting these until 2001. He bets there are people out there right now, within that narrow field of

installation, who can become inspectors at the present time. He does not feel it is necessary to wait until 2001 to have an inspector.

SENATOR TAYLOR called for the question. **Mr. Mitchell** stated the committee would be voting on the motion on subsection 2 by **SEN. COCCHIARELLA** that says "...inspection at a fee which must be commensurate with the reasonable cost of conducting the inspection. A local agent may not conduct inspections required by the 'subsection' after December 31, 2001."

SENATOR CRISMORE asked if that went farther than what will work for the Department? **Mr. Simonich** said if he was asking if it will go farther than what will work for the Department, he would not say that. If he is asking if it is necessary to keep the amendment in the bill he does not believe it is.

SENATOR KEATING asked is there any place in this bill that if there is not a licensed inspector in an area that the Local Government will do the inspection? **Mr. Simonich** stated nothing in the bill speaks to that. They would anticipate there will be several licensed inspectors around the state. Again, the counties that want to continue to do that kind of work are not concluded otherwise. The county could license their own individual to do that work. **SEN. KEATING** stated that is what he thought he heard in the testimony and why he made the comment that we do not need this amendment at all because the locals can do it. Under the Department's administrative rules, the Board could make the distinction right away that in the transition period anyone that knows how to do this stuff can do it. He does not know where the problem is.

SENATOR MAHLUM stated if subsection 2 is taken out then we are going back to local officials only, right? **SENATOR KEATING** said no, absolutely not. The bill says you have to be a licensed inspector to do it. If subsection 2 is taken out then right away you have to be a licensed inspector. The question is who is going to be a licensed inspector? You say, there is going to be a bunch out there that can be licensed right away. He is saying, if in an area there is not a person licensed to do that, can the locals do it? Yes they can and all they have to do is license their own guy.

Vote: Motion that **HB 158 AMENDMENTS PROPOSED BY SEN. COCCHIARELLA BE ADOPTED** failed 3-7 with Senators Crismore, Mahlum, Cole, Keating, Miller, Roush, and Taylor voting no.

Vote: Motion that **HB 158 ALEXANDER AMENDMENT #1 BE ADOPTED** carried 8-2 with Senators Cocchiarella and McCarthy voting no.

Motion: SEN. TAYLOR moved that HB 158 ALEXANDER AMENDMENT #2 BE ADOPTED.

{Tape : 1; Side : B; Approx. Time Counter : 25 - 45; Comments : None.}

Discussion:

SENATOR TAYLOR stated the fees are cut approximately 25% on one and the other by 33%. It is reduced by about one-third. He feels it is a compromise and is probably acceptable.

SENATOR GROSFIELD questioned how many tanks are there in the 1100 and under category vs. the 1100 and over category? Jim Hill, DEQ, stated the tank population is estimated to be about 4,000 tanks. About 3300 - 3400 of which will be greater than 1100 gallons and the remainder of which will be less than 1100 gallons.

SENATOR GROSFIELD stated he did not know why the fees were being raised on the little tanks at all.

Substitute Motion: SEN. GROSFIELD made a substitute motion to LOWER THE FEES ON TANKS 1100 GALLON OR LESS TO \$20 AND RAISE THE FEE TO \$70 ON THE TANKS 1100 GALLONS OR OVER BE ADOPTED FOR THE ALEXANDER #2 AMENDMENT. Motion carried 10-0.

Motion/Vote: SEN. MAHLUM moved that HB 158 BE CONCURRED IN AS AMENDED. Motion carried 8-2 by Roll Call Vote with Senators Cocchiarella and McCarthy voting no. SENATOR GROSFIELD will carry the bill to the Senate floor.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 6.6; Comments : None.}

ADJOURNMENT

Adjournment: 5:10 P.M.

SEN. WILLIAM CRISMORE, Chairman

JYL SCHEEL, Secretary

WC/JS

EXHIBIT (nas75aad)